



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 16, 2003

Mr. Laurence E. Boyd
Danbury City Attorney
Attorney at Law
P.O. Box 269
Angleton, Texas 77516-0269

OR2003-4935

Dear Mr. Boyd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184327.

The City of Danbury (the "city"), which you represent, received a request for calls for service and/or location inquiries regarding a specified address from 1999 to the present, and criminal history and related information regarding a named individual. You claim that some of the requested information may not be subject to disclosure under chapter 552, and that portions of the requested information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

We first address your contention that some of the submitted documents may not be subject to disclosure under the Public Information Act (the "Act") pursuant to an exemption for records of the judiciary. As you point out, the Act does not apply to records of the judiciary. *See* Gov't Code § 552.003(1)(B). Thus, information that is "collected, assembled or maintained by or for the judiciary" is not subject to the Act. Gov't Code § 552.0035(a). However, we find that in the hands of the city, the information at issue was not collected, assembled or maintained by or for the judiciary, and is therefore not exempt from the Act under section 552.003. Therefore, it may only be withheld if one of the exceptions to disclosure under the Act applies.

As section 552.108 of the Government Code is the most inclusive exception under the Act that you raise, we address it first. Section 552.108 provides, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

....

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication

A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You indicate that report number 001008-06 pertains to a criminal investigation that did not result in conviction or deferred adjudication. Thus, we understand you to assert that this investigation concluded in a final result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to this report.

However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic "front-page" offense and arrest report information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). The city must therefore release basic information, including a detailed description of the offense, whether or not the information actually appears on the front page of the police report. *See Houston Chronicle*; Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). The city may withhold the remaining information pertaining to report number 001008-06 under section 552.108(a)(2). As we are able to make this determination, we need not address your remaining claims in relation to this information, except in regard to certain information for which you claim an exception under section 552.101 in conjunction with the common-law right of privacy.

We now turn to your claims for this information, as well as the remaining submitted information. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by the common-law right of privacy. For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it (1) contains highly intimate or

embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. 540 S.W.2d at 685. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Ordinarily, section 552.108(c) does not except from disclosure the identity of a complainant, as this is basic front page offense and arrest information. See *Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976). In this instance, however, the victim in report number 001008-06 is the complainant, and information tending to identify a victim of sexual assault is private. Therefore, you must withhold information that identifies the sexual assault victim in report number 001008-06 pursuant to common-law privacy. See Open Records Decision No. 393 (1983). However, with respect to the remaining submitted information, we note that this office has previously concluded that information concerning domestic violence generally does not come within the scope of common-law privacy. Open Records Decision No. 611 (1992) ("An assault by one family member on another is a crime, not a family matter normally considered private").

Further, where an individual's criminal history information has been compiled by a governmental entity, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); see also Open Records Decision No. 616 at 2-3 (1993). In this instance, the requestor seeks, in part, unspecified criminal history information in which a named individual is identified. Thus, this portion of the request requires the city to compile information regarding the named individual. Based on the reasoning set out in *Reporters Committee*, such a compilation implicates an individual's right to privacy to the extent that it includes arrests and investigations where the individual is a suspect, arrestee, or defendant in a case. Accordingly, to the extent that the city maintains information relating to arrests and investigations where the individual is a suspect, arrestee, or defendant, we conclude that such information must be withheld pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

However, with regard to your remaining claim in relation to common-law privacy, this office has long held that social security numbers are not the type of intimate and embarrassing information protected under common-law privacy. See Open Records Decision Nos. 622 (1994), 455 (1987), 254 (1980), 169 (1977). Therefore, you may not withhold social security information under section 552.101 in conjunction with common-law privacy.

We note that section 552.101 also encompasses information protected by other statutes. You further argue that social security numbers found in the submitted documents must be withheld under section 552.101. A social security number or "related record" may be withheld in some circumstances under section 552.101 of the Government Code in

conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* You state that pursuant to section 411.086 of the Government Code, “[s]ocial security numbers are part of the information collected for criminal history records.” Section 411.086 contemplates rules that the Department of Public Safety (“DPS”) shall adopt in regard to requests for criminal history information. Section 411.086(b)(2) states that such rules “may require a person requesting criminal history information about an individual to submit to [DPS] one or more of the following: . . . (E) any known identifying number of the individual, including social security number . . .”. However, you do not inform this office whether the city obtained or maintains any of the social security number information at issue in order to request criminal history information from DPS. Moreover, you do not inform us as to whether DPS actually requires or required the city to submit any of the social security number information at issue.

We conclude that the social security number information in the submitted documents is confidential under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act if the city obtained or maintains the social security number information for the purpose of requesting criminal history information from DPS, and if DPS actually requires or required the city to submit that information to DPS in connection with a request for criminal history information. To the extent the social security information was obtained or is maintained by the city solely under a policy or practice to identify individuals, we advise that such a policy or practice does not constitute a law enacted on or after October 1, 1990 authorizing the city to obtain or maintain a social security number. In that case, we have no basis for concluding that any of the social security numbers in the submitted documents are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained pursuant to any provision of law enacted on or after October 1, 1990.

Finally, you argue that the submitted documents contain information excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from public disclosure information relating to a driver’s license, license plate, or motor vehicle title or registration issued by an agency of this state. Therefore, we agree that the city must withhold under section 552.130 the Texas driver’s license information contained in the submitted documents.

In summary, the city may withhold report number 001008-06 under section 552.108, with the exception of basic information. However, the identity of the victim in report number 001008-06 must be withheld under section 552.101 in conjunction with common-

law privacy. To the extent that the city maintains information relating to arrests and investigations where the individual is a suspect, arrestee, or defendant, we conclude that such information must also be withheld pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained pursuant to any provision of law enacted on or after October 1, 1990. The city must withhold the Texas driver's license information it has marked under section 552.130. The remaining submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

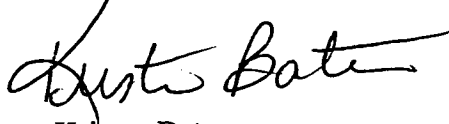
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristen Bates", with a stylized flourish at the end.

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/lmt

Ref: ID# 184327

Enc. Submitted documents

c: Ms. Shelley Lewis
c/o Laurence E. Boyd
P. O. Box 269
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(w/o enclosures)